

available to CLECs under section 251(c)(3).²⁵⁹ Aside from OSS, the other UNEs that Nevada Bell must make available under section 251(c)(3) also are listed as separate items on the competitive checklist, and are addressed below in separate sections for each checklist item.”)

169. Nondiscriminatory access to OSS and the ability of competing carriers to combine UNEs are integral aspects of the Company’s obligation to provide access to UNEs. In this section, we address the two principal questions that the FCC will ask under Checklist Item 2 are: (1) Does Nevada Bell provide access to OSS in accordance with section 251(c)(3) and the local competition rules, and (2) does Nevada Bell provide access to UNE combinations in accordance with 47 U.S.C.A. § 51.315(b)?²⁶¹ Before addressing OSS and UNE combination issues, however, the related topic of UNE pricing and intellectual property issues will be addressed.

3. UNE pricing

170. Commencing in 1998, the Commission conducted an extensive proceeding to establish costs and prices for UNEs. After a series of collaborative workshops and evidentiary hearings, the Commission adopted prices for Nevada Bell’s UNE offerings.²⁶² The Commission “used the Total Element Long-Run Incremental Cost (“TELRIC”) methodology in determining most UNE recurring charges in Docket 98-6004.”²⁶³ Nevada Bell offers the UNEs that were not addressed in that proceeding at interim prices, subject to true-up based on the results of the ongoing UNE costing proceeding.” Non-recurring charges were established through two separate proceedings. PUCN Docket No. 99-12033 and 00-4041, “in which the Commission employed the TELRIC methodology [to determine] those non-recurring charges,” or adopt prices that were agreed to by Nevada Bell, the Staff, BCP and competitive providers.²⁶⁵ In sum, the

²⁵⁹ See Third Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, ¶ 15 (“Third Report and Order”).

²⁶⁰ See 47 U.S.C.A. § 271(c)(2)(B) (unbundled loops, transport and switching, for example, are listed separately as checklist items iv, v and vi)

²⁶¹ 47 U.S.C.A. § 51.315(b).

²⁶² Exhibit 22, Redmon Direct Testimony at ¶¶ 41 & 42-46.

²⁶³ Exhibit 152, Otsuka Phase II-B Direct at 15.

²⁶⁴ Id. at 15

²⁶⁵ Id. at 15

recurring and nonrecurring charges for UNEs that Nevada Bell offers to all CLECs through its generic interconnection agreement – the GIA – are cost-based and TELRIC compliant.””

171. No competitive provider, in fact, disputed that Nevada Bell's recurring and non-recurring charges are cost-based, TELRIC rates determined in compliance with the FCC pricing rules. Two carriers raised issues relating to UNE prices. One carrier who later withdrew from the proceeding, ATG, claimed that Nevada Bell's prices were not permanent, but instead were subject to too much "uncertainty" to demonstrate compliance with the Act.²⁶⁷ In fact, however, the "full suite of UNEs offered by Nevada Bell are priced at rates approved by the Commission, and where the Commission has yet to order a rate, at interim prices that Nevada Bell will true-up for any CLEC that has negotiated rates, charges, terms, and conditions from the GIA.”²⁶⁸ Nevada Bell's generic offering – the GIA – contains cost-based, TELRIC compliant prices established by the Commission.”” Moreover, as Nevada Bell witness Terry Redmon explained, the Commission has demonstrated its commitment to establishing just and reasonable cost-based UNE rates using the TELRIC methodology.²⁷⁰ These facts refute ATG's claim.

172. Another carrier, WorldCom, argued that Nevada Bell's UNE-P prices "squeezed" its competitors.²⁷¹ WorldCom's claim, however, is not persuasive.

173. In Sprint v. FCC, the D.C. circuit concluded that the FCC's rejection of Sprint's profitability argument was not responsive to Sprint's public interest argument.”” While the FCC considers the questions posed in Sprint v. FCC on remand, it has affirmatively addressed the specific allegations of price squeeze presented by parties in subsequent 271 proceedings.²⁷³ The

²⁶⁶ See Exhibit 3 Hopfinger Direct Testimony at CLH Attachment A760 (GIA Appendix – Pricing); Exhibit 69, Hopfinger Rebuttal Testimony at 6, 10 & 14.

²⁶⁷ See Exhibit 17, Thomas Direct at 18.

²⁶⁸ Exhibit 69, Hopfinger Rebuttal Testimony at 11.

²⁶⁹ Exhibit 4, Hopfinger Direct Testimony ¶¶ 119-25.

²⁷⁰ See Exhibit 85, Redmon Rebuttal Testimony at 6-10 & 11-12.

²⁷¹ Exhibit 14, Testimony of Robert Munoz Regarding Phase I Issues at 26-29.

²⁷² Sprint Communications Co. L.P. v. FCC, 273 F.3d 549, 554 (D.C. Cir. 2001)

²⁷³ Memorandum Opinion and Order, Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Vermont, FCC 02-118, CC Docket No. 02-7, ¶ 66 (rel. April 16, 2002) (“Vermont Order”)

FCC has concluded that the effect of a resale entry strategy, the internal costs of an efficient competitor, and additional revenues that may be available to competitors, such as toll revenues and federal universal service funds revenues, are all relevant when considering a price squeeze allegation.²⁷⁴ Mr. Redmon explained, WorldCom's witness Mr. Munoz's revenue analysis failed to consider similar considerations, such as the additional revenue that WorldCom might earn from vertical features.²⁷⁵ Indeed, Mr. Munoz acknowledged on cross-examination that he had assumed that WorldCom would only provide a single vertical feature even though it would enjoy access "to all vertical capabilities of the switch" at no additional cost.²⁷⁶ Consequently, the Commission rejects the analysis of Mr. Munoz just as the FCC has rejected similarly flawed price squeeze allegations.

174. The Commission has and will continue to adopt cost-based, TELRIC compliant UNE rates for Nevada Bell. Where necessary, the Commission has conducted separate and focused proceedings to establish such rates. In fact, pending before the Commission in Docket No. 00-7012 is a proceeding to reexamine UNE costs and rates to ensure that Nevada Bell's UNE prices remain cost-based and TELRIC compliant. These facts demonstrate that Nevada Bell provides access to UNEs at cost-based rates that are "just, reasonable and nondiscriminatory" within the meaning of Section 252(d)(1) and the FCC's pricing rules.

4. Intellectual Property

175. With respect to intellectual property, Nevada Bell meets its obligation under the Act and the FCC's Intellectual Property Order.²⁷⁷ Under that order, Nevada Bell "must exercise [its] best efforts to obtain co-extensive rights for competing carriers purchasing unbundled network elements."²⁷⁸ Nevada Bell is in compliance with this FCC requirement.²⁷⁹ The GIA's general terms and conditions, which the Commission approved in approving Nevada Bell's

²⁷⁴ Id. ¶¶ 69-71

²⁷⁵ Exhibit 85, Redmon Rebuttal Testimony at 13-14.

²⁷⁶ Id.

²⁷⁷ Memorandum Opinion and Order, Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements, 15 FCC Rcd 13896 (2000)

²⁷⁸ Id.

²⁷⁹ See Exhibit 4, Hopfinger Direct Testimony ¶ 89

interconnection agreement with NationNet Communications Corporation, obligates Nevada Bell to use its best efforts to obtain intellectual property rights that are necessary for the requesting carrier to use UNEs.²⁸⁰ Nevada Bell's witness testified that the Company was not aware of any action in which a third party intellectual property owner had asserted a claim or a request for payment for a CLEC's use of Nevada Bell's UNEs.²⁸¹

5. Access to OSS

176. The FCC has developed a two-step analysis to determine whether a 271 applicant provides nondiscriminatory access to the following five OSS functions: (i) pre-ordering, (ii) ordering, (iii) provisioning, (iv) maintenance and repair, and (v) billing. Under the first prong, the FCC determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."²⁸² Under the second prong, the FCC also evaluates "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."²⁸³

177. The most probative evidence that OSS functions are operationally ready is actual commercial usage.²⁸⁴ Where, as is the case here, a BOC proves that many of the OSS functions in the state for which it seeks 271 authorization (Nevada) are the same as those in another state (California), the FCC will also look to performance in the second state (California) as additional evidence in making a determination of checklist compliance.²⁸⁵ Finally, in the absence of

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See id.

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See Exhibit 4, Hopfinger Direct Testimony 89

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Ameritech Michigan Order ¶ 136. In making this determination, the Commission "consider[s] all of the automated and manual processes a BOC has undertaken to provide access to OSS functions," including the interface (or gateway) that connects the competing carrier's own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC's OSS (including all necessary back office systems and personnel), and all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier. Id. ¶ 134.

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SBC Texas Order ¶ 96.

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Id.

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See SBC Kansas/Oklahoma Order ¶ 105 ("Finally, where, as here, the BOC proves that many of the OSS functions in the state for which it seeks 271 authorization are the same as in a state *for* which we have already granted such authorization, we will also look to performance in the latter state as additional evidence with which to make our determination").

sufficient and reliable commercial usage data, the FCC will consider other evidence, such as third party, carrier-to-carrier, and internal testing.””

a. Pre-ordering

 Overview

178. Nevada Bell complies with the pre-ordering requirements of Checklist Item 2. Competitive LECs have built and are using application-to-application interfaces to perform pre-ordering functions. CLECs, in addition, can integrate pre-ordering and ordering functionality, and enjoy nondiscriminatory access to loop qualification information. Because efficient CLECs have a meaningful opportunity to compete with Nevada Bell, the Commission believes that the FCC should find that Nevada Bell satisfies the pre-ordering component of Checklist Item 2.

(2) Standard

179. While the FCC has indicated that an ILEC such as Nevada Bell should demonstrate that competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions.”” the FCC has also stated that BOC’s duty does not “include the duty to ensure that competing providers are using each and every OSS function,””²⁸⁶ In addition, CLECs must be able to integrate pre-ordering and ordering interfaces.²⁸⁹ Nevada Bell’s pre-ordering systems must provide reasonably prompt response times for the following five pre-ordering functions: (i) customer service record (“CSR”) information, (ii) address validation, (iii) telephone number information, (iv) due date information, and (v) services and feature information.”” Nevada Bell’s electronic interfaces must be consistently available in a manner that affords competitors a meaningful opportunity to compete.”” The Company must offer nondiscriminatory access to OSS pre-ordering functions

²⁸⁶ See *id.* (“Absent sufficient and reliable data on commercial usage in that state, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC’s OSS.”).

²⁸⁷ See SBC Texas Order ¶ 149; see also Appendix F ¶ 33.

²⁸⁸ Ameritech Michigan Order: 138.

²⁸⁹ SBC Texas Order ¶ 148; Appendix F ¶ 33.

²⁹⁰ See SBC Texas Order ¶ 149; Appendix F ¶ 33.

²⁹¹ SBC Kansas/Oklahoma Order ¶ 119; Appendix F ¶ 33.

associated with determining whether a loop is capable of supporting xDSL advanced technologies.”” In the section that follows, each one of those five requirements is addressed.

(3) Analysis

(A) CLECs’ preordering options

180. Nevada Bell offers CLECs operating in Nevada a choice of four electronic interfaces for pre-ordering: (i) Verigate; (ii) DataGate; (iii) Electronic Data Interchange (“EDI”); and (iv) Common Object Request Broker Architecture (“CORBA”).²⁹³ DataGate, EDI and CORBA are application-to-application interfaces.””

181. These electronic interfaces give competitive providers nondiscriminatory access to the full range of pre-ordering functions that are available to Nevada Bell’s retail operations. CLECs can perform the following tasks: (i) address validation or verification; (ii) retrieve and view customer service records; (iii) access directory listings; (iv) determine service and feature availability; (v) view and request a time frame for connecting service; (vi) determine dispatch requirements; (vii) access and reserve telephone numbers; (viii) access the primary interexchange carrier and local primary intraLATA carrier lists; (ix) access the common language location identifier for the serving central office; (x) verify channel assignment for UNEs; (xi) verify network channel and network channel interface for UNEs; (xii) perform DSL loop qualification and pre-qualification functions; and, (xiii) obtain DSL 26-gauge theoretical loop length.²⁹⁵ CLECs, in addition, can access pre-ordering functions manually (e.g., by facsimile, United States Postal Service, or courier).

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²⁹² SBC Kansas/Oklahoma Order ¶ 119; Appendix F ¶ 33.

²⁹³ Supplemental Direct Testimony of Stephen D. Huston and Adoption and Supplemental Direct Testimony of Beth Lawson with adopted Direct Testimony and Draft Affidavit of Elizabeth A. Ham, Exhibit 120, ¶ 8 (“Huston Lawson Supplemental Direct”).

²⁹⁴ Id. ¶¶ 58 & 61.

²⁹⁵ Id. ¶¶ 53 – 54, 64, 70 – 71, & 74 – 75.

(B) Competitive providers have successfully built application-to-application interfaces

182. CLECs have successfully built and are using application-to-application interfaces to pre-ordering functions. The most probative evidence of this fact is that CLECs use EDI and CORBA application-to-applicatioii interfaces to process pre-ordering transactions in a commercial setting. Performance measure data corroborate EDI/CORBA usage. Between June and August, 2001, CLECs operating in Nevada used the Regional EDI/CORBA interface to process nearly 35,000 pre-order inquiries in several pre-ordering functional categories."²⁹⁶ CLECs also used the Regional DataGate interface to perform other pre-ordering transactions.²⁹⁷ Finally, the California Test and the California Order both confirm that CLECs can successfully build and use application-to-application interfaces to perform pre-ordering inquiries.²⁹⁸ Collectively, this evidence demonstrates that CLECs have built and can successfully use application-to-application interfaces to access all of the pre-ordering functions that Nevada Bell provides to itself.

(C) CLECs can successfully integrate pre-ordering information obtained from Nevada Bell into the ordering process and their back office systems

183. The evidence also establishes that CLECs can successfully integrate pre-ordering information into the ordering process and their own back office systems. Nevada Bell's regional pre-ordering systems allow CLECs to transfer pre-ordering information (such as a customer's address or existing features), obtained from Nevada Bell electronically, into the CLEC's back office systems.""" Competitive providers likewise can automatically transfer pre-ordering information onto an LSR that will not be rejected by Nevada Bell's regional ordering system:³⁰⁰

²⁹⁶ Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 1, Submeasures 105001, 108101, 108201 & 108401. During that same time frame, CLECs used the Regional EDI/CORBA interfaces to perform many more pre-order inquiries, including loop qualifications, address verification, check facilities availability, request telephone numbers, request CSRs, and schedule due dates. See Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment L, PM 1, Submeasures 106000, 106001, 106002, 106003, 1060078: 106008.

²⁹⁷ See Exhibit 144, Johnson Supplemental Rebuttal, CSJ Attachment L, PM 1, Submeasure 1-04001 & 14101

²⁹⁸ See Exhibit 119, Supplemental Direct Testimony of Stephen D. Huston, Final Report for Test Generation Services § 5.5.6 ("Huston Supplemental Direct"), California Order at 270 ("The total number of queries used in the Pre-order test was 42,762 of which 22% (9,299) were processed through the Verigate system and 78% (33,463) were processed through the application-to-application DataGate interface.") & 2 ("We hold that Pacific has successfully passed the independent third-party test of its [OSS].").

²⁹⁹ See generally Exhibit 120, Huston/Lawson Supplemental Direct ¶¶ 65-68.

³⁰⁰ Exhibit 120, Huston/Lawson Supplemental Direct ¶¶ 65-68.

The Regional OSS “presently supports fielded or parsed information in the Address Validation function in DataGate, EDI and CORBA.”³⁰¹ This function allows a CLEC *to* populate automatically an LSR by taking the address returned from a CSR and sending the address through the Address Validation function.” Alternatively, the CLEC service representative can obtain the customer’s address from the customer and, while the customer remains on the line, send the address through the Address Validation function and populate the parsed result on an LSR.³⁰³

184. The California OSS Test and California Order corroborate Ms. Ham’s draft affidavit. During the California Test, the test generator (“GXS”) developed a “custom software application . . . using Web browser-based data entry screens [that allowed] GXS staff to specify and execute both DataGate pre-order transactions and subsequent EDI order transactions, incorporating certain fields from the pre-order responses . . .”³⁰⁴ Based on this fact, the CPUC found that “GXS was able to demonstrate that pre-order/ordering integration can reasonably be accomplished by an efficient CLEC.”³⁰⁵ The record thus establishes that an efficient CLEC can successfully integrate pre-ordering and ordering functions.

(D) Nevada Bell’s electronic interfaces provide reasonably prompt responses to CLEC pre-order inquiries

1. The Regional EDI/CORBA interface provides reasonably prompt response times

185. CLECS use the EDI/CORBA interface to perform pre-order inquiries in an actual commercial setting. Nevada Bell’s EDI/CORBA performance measurement data demonstrate that the EDI/CORBA ~~applicatioi~~~~i-to-application~~ interface provides reasonably prompt response times to pre-order inquiries. The following table summarizes those results.

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³⁰¹ Id. ¶ 66.

³⁰² Id. Telcordia’s Exchange Link software also provides for integration pre-ordering information obtained through the EDI pre-ordering interface into the EDI ordering interface. Id. ¶ 68.

³⁰³ Id. ¶ 66.

³⁰⁴ See Exhibit 119, Huston Supplemental Direct, TG Final Report § 5.6.4.1

³⁰⁵ California Order at 88.

Measure – Average Response Time to Pre-Order Queries³⁰⁶
Nevada Bell EDI/CORBA Interface

MONTH/YEAR	QUERY TYPE	VOLUME	PERFORMANCE	BENCHMARK
June 01	Request for Telephone No.	10	1.93 Seconds	4.5 Seconds
July 01	Request for Telephone No.	17	2.18 Seconds	4.5 Seconds
August 01	Request for Telephone No.	21	3.10 seconds	4.5 Seconds
June 01	Address Verification	1,300	4.36 Seconds	4.5 Seconds
July 01	Address Verification	6,200	3.29 Seconds	4.5 Seconds
August 01	Address Verification	4,600	4.85 seconds	4.5 Seconds
June 01	Request for CSR	4,800	3.03 Seconds	10 Seconds
July 01	Request for CSR	11,300	2.90 Seconds	10 Seconds
August 01	Request for CSR	6,700	3.95 seconds	10 Seconds
June 01	Reject Failures	4,000	0.76 Seconds	Tbd
July 01	Reject Failures	20,400	0.95 Seconds	Tbd
August 01	Reject Failures	24,400	1.15 Seconds	Tbd
June 01	Due Date	2	1.73 Seconds	2.0 Seconds
July 01	Due Date	19	1.31 Seconds	2.0 Seconds
August 01	Due Date	0	--	2.0 Seconds

These performance results, which reflect the volume of actual commercial transactions, show that Nevada Bell's EDI/CORBA provides reasonably prompt response times.³⁰⁷

ii. Verigate provides reasonably prompt response times

186. CLECs operating in Nevada also use Verigate to perform certain pre-order inquiries. The performance data for pre-ordering inquiries submitted through the Verigate interface shows that Verigate also provides reasonably prompt response times. The following table summarizes those results.

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³⁰⁶ Exhibit 144, Johnson Supplemental Rebuttal at 17.

³⁰⁷ Pacific Bell's performance results confirm that the EDI/CORBA interface provides reasonably prompt response times. *Id.* at 13 n. 26.

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Measure 1- Average Response Time to Pre-Order Queries
Nevada Bell Verigate Interface

MONTH/YEAR	INTERFACE	QUERY TYPE	VOLUME	PERFORMANCE	BENCHMARK
June 01	Verigate	Add. Verification	803	4.49 seconds	4.50 seconds
July 01	Verigate	Add. Verification	1,000	4.45 seconds	4.50 seconds
August 01	Verigate	Add. Verification	1,100	4.55 seconds	4.50 seconds
June 01	Verigate	Request for CSR	94	34.13 seconds	10.0 seconds
July 01	Verigate	Request for CSR	145	7.43 seconds	10.0 seconds
August 01	Verigate	Request for CSR	371	12.58 seconds	10.0 seconds
June 01	Verigate	Service Availability	2	4.00 seconds	8.0 seconds
July 01	Verigate	Service Availability	0	--	8.0 seconds
August 01	Verigate	Service Availability	0	--	8.0 seconds
June 01	Verigate	Rejects	366	5.04 seconds	Tbd
July 01	Verigate	Rejects	342	4.55 seconds	Tbd
August 01	Verigate	Rejects	892	2.61 seconds	Tbd
June 01	Verigate	Dispatch/Fac. Avail.	9	3.11 seconds	11.0 seconds
July 01	Verigate	Dispatch/Fac. Avail.	22	3.64 seconds	11.0 seconds
August 01	Verigate	Dispatch/Fac. Avail.	24	3.13 seconds	11.0 seconds

These results show that Nevada Bell's systems respond promptly to pre-order inquiries submitted by CLECs using the Verigate interface.

iii. Pacific Bell's performance data confirm that DataGate and Verigate provide reasonably prompt response times to pre-order inquiries

187. CLECs operating in California use the same DataGate and Verigate interfaces that are available to Nevada CLECs, making even more pre-order inquiries in an actual commercial environment. The following table summarizes the Regional OSS results for June, July, and August 2001.

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Measure 1- Average Response Time to Pre-Order Queries''''

MONTH/YEAR	INTERFACE	QUERY TYPE	VOLUME	PERFORMANCE	BENCHMARK
June 01	DataGate	Reject Failures	211	6.18 seconds	Tbd
July 01	DataGate	Reject Failures	574	3.95 seconds	Tbd
August 01	DataGate	Reject Failures	1,100	2.07 seconds	Tbd
June 01	DataGate	Request for CSR	599	6.10 seconds	10.0 seconds
July 01	DataGate	Request for CSR	3,000	3.28 seconds	10.0 seconds
August 01	DataGate	Request for CSR	6,200	2.98 seconds	10.0 seconds
June 01	Verigate	Add. Verification	35,400	4.43 seconds	4.50 seconds
July 01	Verigate	Add. Verification	31,000	4.10 seconds	4.50 seconds
August 01	Verigate	Add. Verification	40,000	4.84 seconds	4.50 seconds
June 01	Verigate	Request for TN	6,800	1.42 seconds	4.50 seconds
July 01	Verigate	Request for TN	7,300	1.58 seconds	4.50 seconds
August 01	Verigate	Request for TN	7,500	1.65 seconds	4.50 seconds
June 01	Verigate	Request for CSR	68,600	4.87 seconds	10.0 seconds
July 01	Verigate	Request for CSR	70,900	4.06 seconds	10.0 seconds
August 01	Verigate	Request for CSR	92,200	5.26 seconds	10.0 seconds
June 01	Verigate	Service Availability	10,600	4.00 seconds	8.0 seconds
July 01	Verigate	Service Availability	7,700	4.20 seconds	8.0 seconds
August 01	Verigate	Service Availability	7,300	4.27 seconds	8.0 seconds
June 01	Verigate	Due Date	278	1.28 seconds	2.0 seconds
July 01	Verigate	Due Date	154	1.90 seconds	2.0 seconds
August 01	Verigate	Due Date	172	1.35 seconds	2.0 seconds
June 01	Verigate	Dispatch/Fac Avail	841	3.52 seconds	11.0 seconds
July 01	Verigate	Dispatch/Fac Avail	926	3.38 seconds	11.0 seconds
August 01	Verigate	Dispatch/Fac Avail	1,200	3.61 seconds	11.0 seconds

188. Nevada Bell consistently responds in a timely manner to pre-order inquiries submitted by facsimile, mail, or courier. The results of actual commercial transactions, which are tracked and reported under the PM&IP, substantiate this assertion. Between April and August 2001, Nevada Bell responded to more than 550 facsimile requests, consistently satisfying

the "95 percent within 4 hours" benchmark for CSRs.³¹⁰ Nevada Bell, in fact, has met the benchmark for this sub-measure for each month between January and August 2001.³¹¹ Nevada Bell also responds to manual checks for facility availability for basic UNE loops, ISDN capable loops (the K1023 process) and other manual pre-order inquiries''' in a timely manner. In June, July and August, 2001, Nevada Bell satisfied the relevant standards.³¹³

(F) Nevada Bell's electronic interfaces are stable and reliable

189. Nevada Bell's electronic interfaces are consistently available. PM 42 reports the percentage of time that Nevada Bell's OSS interfaces are available in a given time frame. Between June and August 2001, DataGate was available 100 percent of the scheduled hours, exceeding the 99.25 percent benchmark.³¹⁴ Nevada Bell, in fact, did not miss a single submeasure under PM 42 for any interface between April and August 2001.³¹⁵ These facts demonstrate that Nevada Bell's interfaces are stable and reliable and, therefore, provide an efficient competitor with a meaningful opportunity to compete.

(G) Competitive providers have nondiscriminatory access to loop qualification information

1. Overview

190. Nevada Bell's systems and processes allow CLECs to offer any type of xDSL service, including the high frequency portion of the loop ("HFPL") provisioned through either a line sharing or line splitting arrangement.³¹⁶ The Company developed these offerings in part through a multi-region collaborative process and trial.''' The process involved other SBC operating companies, including Pacific Bell,³¹⁸ and numerous CLECs.³¹⁹

³¹⁰ Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM1, submeasure 1-03300

³¹¹ Exhibit 144, Johnson Supplemental Rebuttal at 15.

³¹² Id. at 17

³¹³ Id.

³¹⁴ Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 42, submeasure 42-00700.

³¹⁵ Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 42.

³¹⁶ Exhibit 115, Direct Testimony of Carol A. Chapman and Draft Affidavit ¶ 3 ("Chapman Direct"); Exhibit 116, Supplemental Direct Testimony of Carol A. Chapman at 4-8.

³¹⁷ Exhibit 115, Chapman Direct ¶ 7.

³¹⁸ See California Order at 146; Exhibit 115, Chapman Direct ¶ 7.

³¹⁹ Exhibit 115, Chapman Direct ¶ 7.

191. The following section discusses the pre-ordering processes that CLECs can use to access Nevada Bell's xDSL offerings. Section V(D)(3)(b), *infra*, addresses xDSL loop provisioning, maintenance, and repair. Nevada Bell provides competitive providers access to loop qualification information in compliance with FCC rules and orders, including the UNE Remand Order. CLECs have access to all of the detailed information about specific loops that Nevada Bell has in any of its databases and other internal records.

192. Nevada Bell does not filter loop make-up information, and imposes no limits on any carrier's advanced service offerings as long as the carrier operates within national industry guidelines and applicable FCC rules.³²⁰ Nevada Bell instead provides loop make-up information data to CLECs in a form that allows the competitive provider to make an independent judgment about whether the loop will support the advanced service that the CLEC intends to provide.³²¹ CLECs obtain this information in substantially the same time frame as Nevada Bell's fully operational advanced service affiliate ("ASI").³²² The Commission believes that the FCC should find that Nevada Bell satisfies this component of the competitive checklist.

ii. Description and Analysis of Pre-ordering Systems

193. During the pre-ordering process, a CLEC may request both loop "pre-qualification" and "make-up" information through DataGate, EDI/CORBA, and Verigate. Loop pre-qualification information consists of general information about Nevada Bell's Facilities.³²³ CLECs can use this real-time screening tool to draw preliminary conclusions about whether, and what type of, xDSL service the competitive provider can offer a particular customer.

194. Loop make-up information, on the other hand, consists of the specific loop's physical characteristics.³²⁴ This type of more detailed and specific information is available to all

³²⁰ *Id.* ¶ 3.

³²¹ *Id.* ¶¶ 3-4 & 15-18.

³²² See generally Exhibit 144, Johnson Supplemental Direct at 10-12.

³²³ Exhibit 115, Chapman Direct ¶ 21. The pre-qualification system provides several pieces of information, including (i) a "green, yellow or red" indicator summarizing the information, (ii) the theoretical 26-gauge equivalent loop length, (iii) design cable guide make-up (a break down of the loop length, by wire gauge, for the designed loop make-up information), and (iv) the wire center code for the specified address. *Id.*

³²⁴ *Id.* ¶ 15. Loop make-up information includes a variety of elements, such as loop length, wire gauge, loop medium (copper or fiber), and data regarding bridged tap, load coils, or repeaters present on the loop. *Id.*

CLECs, including ASI, "in the same manner through the same interfaces."³²⁵ CLECs may request either designed or actual loop make-up information by using electronic interfaces."³²⁶ CLECs can obtain the same information through manual processes.

195. The loop qualification process provides CLECs all of the information they need to determine which category of DSL service a loop will support. This information includes: (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.³²⁷ Nevada Bell delivers this information in compliance with the UNE Remand Order.³²⁸

196. Where loop make-up information resides in an electronic format within Nevada Bell's systems, the Company enables competing carriers access to this information. Nevada Bell's affiliate, ASI, uses the same database to determine actual loop make-up information for its retail operations in the same fashion that it is made available to competing carriers.³²⁹ When queried, Nevada Bell's systems automatically return information on a non-loaded copper loop if there is information in the Company's systems on an available, non-loaded copper loop to the

³²⁵ Id. ¶ 27.

³²⁶ To address the need for loop make-up information, Nevada Bell developed a database containing designed loop make-up information for each distribution area within its service territory. Id. ¶ 17. Designed loop make-up information is based upon the standard design for the longest loop serving the end user's distribution area. Id. Actual loop make-up information, on the other hand, is loop make-up information for an actual loop serving the end user's address. Id. ¶ 18. Where actual loop make-up information is contained in an electronic database, CLECs can access information in that database. Id. If actual loop make-up information is not contained in Nevada Bell's electronic database, CLECs may proceed on the basis of designed loop make-up information, or request that Nevada Bell access paper records to obtain actual loop make-up information. Id. ¶ 19. Once Nevada Bell completes such a request, the outside plant engineering department updates Nevada Bell's database by entering the actual loop make-up information. Id. The Company, moreover, has committed to improve the quality and availability of loop make-up information and, accordingly, updates such information when it performs "various network activities." Exhibit 117, Chapman Rebuttal at 9.

³²⁷ Id. at 28.

³²⁸ Compare id. with UNE Remand Order, 15 FCC Rcd at 3885.

³²⁹ Exhibit 115, Chapman Direct ¶ 32.

specified address.''' ASI uses this same mechanized information for its own internal provisioning, and receives the information through interfaces available to unaffiliated carriers.''' In addition, when performing a manual lookup, Nevada Bell performs the same process and returns the same type of information to the requestor regardless of whether it is for a competing carrier or ASI.³³² In sum, ASI's presence as a fully operational, separate affiliate provides additional assurance that CLECs receive that to which they are entitled under the Act: nondiscriminatory access to the Nevada Bell support systems that are necessary to qualify, order, provision, maintain, repair and bill for advanced services,'''

197. Nevada Bell's performance data confirm that it provides responses to competing carrier requests for loop information in substantially the same time and manner as for itself. Between January and August, 2001, Nevada Bell responded to over 4,700 mechanized queries for actual and design loop qualification information.''' Nevada Bell provided actual loop qualification information to CLECs in 14 seconds or less in the three-month period of June through August 2001.³³⁵ "The volumes were relatively large, with 177, 206, and 196 observations in each of the three months."³³⁶ The average response times, while reasonably prompt, fall short of statistical parity. The difference, however, is slight, measuring four to five seconds. During that same period, June to August 2001, Nevada Bell returned design loop qualification information in approximately 3.5 seconds in response to more than 700 pre-order queries.³³⁷ These results also fall short of parity. But the difference is minute -- less than 2 seconds. Although the results have fallen short of parity, the response times remain quite prompt on a real time basis

³³⁰ See Exhibit 116, Supplemental Direct Testimony of Carol A. Chapman at 8.

³³¹ See Exhibit 115, Chapman Direct ¶ 20, Exhibit 117, Chapman Rebuttal at 4 ("Nevada Bell's separate advanced service affiliate must submit requests for loop make-up information through the same interfaces available to all other CLECs"); Exhibit 112, Supplemental Direct Testimony of John S. Hahceh at 3 ("Hahceh Supplemental Direct").

³³² See generally Exhibit 117, Chapman Rebuttal

³³³ See Exhibit 112, Hahceh Supplemental Direct at 5-6.

³³⁴ Exhibit 144, Johnson Supplemental Rebuttal at 10.

³³⁵ Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 1, Submeasure 107700.

³³⁶ Id.

³³⁷ Id. PM 1, Sub-measure 107800

198. Nevada Bell responds to manual requests for loop qualification information in a timely manner. Between January and August 2001, the Company responded to more than 170 requests for loop make up information.³³⁸ The average response time for each month was less than 40 minutes.” The number of manual loop qualification requests has remained consistent, ranging between 10 and 25 orders each month.” The quantitative data demonstrates that the Company provides loop make up information in a timely manner in response to the current and reasonably foreseeable demand of mechanized and manual requests.

199. The CPUC’s recent decision on Pacific Bell’s draft 271 application substantiates this conclusion. As the CPUC noted, while the Regional OSS has failed to meet statistical parity by narrow margins when responding to requests for loop make up information, “the results of two other associated measures, however, indicated that CLEC’s performance has generally exceeded the parity or benchmark standard.”³⁴¹ Nevada Bell’s performance for those same two associated measures likewise shows that performance for CLECs generally meets or exceeds the applicable standards.³⁴² These facts – that CLECs receive FOCs and rejection notices for xDSL orders in an expeditious fashion – reveal that the slight differences in responses to requests for loop make up information neither reflect systematic discrimination nor impede the CLECs ability to compete in the advanced services market. In light of all the circumstances, it is apparent that Nevada Bell, just like Pacific Bell, “has satisfied the technical and performance requirements for DSL loop qualification.”³⁴³

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³³⁸ Exhibit 144, Johnson Supplemental Rebuttal at 11

³³⁹ Id.

³⁴⁰ Id.

³⁴¹ California Order, at 135 (footnote omitted)

³⁴² See also Exhibit 1?? Johnson Supplemental Rebuttal, GSJ Attachment K, PM 2, Submeasures 201300, 201301 & 201400; see generally id., PM 3, Submeasures 300200, 300202, 300400, 300401, 300700 & 300900.

³⁴³ California Order at 136.

(H) Pre-ordering issues raised by Staff, BCP or Competitive Providers

200. Dr. Otsuka concluded that Nevada Bell did not meet the requirements of Checklist Item 2 in his August, 2001 testimony. Dr. Otsuka's conclusion is based on his assessment that "[t]here is no CLEC activity record for" the DataGate application-to-application interface.¹⁴⁴ This fact -- that Nevada Bell did not record any data for the DataGate interface for May through August, 2001-- does not prevent the Commission from concluding that the record establishes Nevada Bell's compliance with the requirements of Checklist Item 2 where Nevada Bell has shown the commercial readiness of DataGate through California performance results and the California test.¹⁴⁵ A review of those PM results reveals that the regional OSS provides prompt response times for important pre-ordering functionalities.

h. Ordering

(1) Overview

201. Nevada Bell's Regional EDI ordering gateway provides CLECs with an electronic interface that conforms to national standards and supports the ordering (and provisioning) of both resale services and UNEs. Local service request Exchange ("LEX"), is a graphical user interface developed by Nevada Bell and is launched from the Toolbar platform. These systems provide CLECs with effective and efficient mechanized means for exchanging ordering information with Nevada Bell. Nevada Bell provides nondiscriminatory access to these and other aspects, including the manual components, of the Regional ordering systems in compliance with the requirements of Section 271

(2) Factual background

202. Ordering activities involve Nevada Bell and competitive providers exchanging information to initiate or modify a service for the CLEC's customer. Nevada Bell accepts local service requests ("LSRs") from CLECs both electronically and manually. CLECs operating in

¹⁴⁴ Exhibit 152, Otsuka Phase 11-B Direct at 17.

¹⁴⁵ See Ameritech Michigan Order ¶ 138; see also California Order at 270 ("The total number of queries used in the Pre-order test was 42,762 of which 22% (9,299) were processed through the Verigate system and 78% (33,463) were processed through the application-to-application DataGate interface "); Exhibit 144, Johnson Supplemental Rebuttal at 16

Nevada Bell's service territory have two principal mechanized ordering options. The first option – transmitting a LSR to Nevada Bell via LEX or the EDI Gateway – is the more commonly used option.³⁴⁶ The second option is for the CLEC to create a service order directly via the Service Order Retrieval and Distribution (“SORD”) by using the same interfaces that Nevada Bell's service representatives use to order service.³⁴⁷ A CLEC also can order service manually by sending Nevada Bell an LSR via facsimile, courier, or United States Postal Service.³⁴⁸ When Nevada Bell receives an LSR via facsimile, courier or mail, a Nevada Bell LSC employee creates a service order for the CLEC.³⁴⁹

203. Upon receipt of an LSR, Nevada Bell responds to the CLEC by sending either a firm order confirmation (“FOC”) or a reject notice. An FOC advises the CLEC that its order has been accepted by Nevada Bell and provides the carrier with information about when the order will be fulfilled.”” A reject notice, on the other hand, informs the CLEC that the LSR was incorrect.³⁵¹ The CLEC must then correct and resubmit the LSR. Nevada Bell issues a jeopardy notice when an order is “in jeopardy of missing the due date (or the due date/time has been missed).”” Finally, when the CLEC's order has been completed, Nevada Bell issues a service order completion (“SOC”) notice, the timeliness of which is tracked under PM 18.³⁵³

(3) Standard

204. Under this OSS ordering component of Checklist Item 2, the FCC analyzes a 271 applicant's ability to provide CLECs access to the applicant's OSS ordering functions. At issue is whether the applicant provides nondiscriminatory access to ordering systems in compliance with the requirements of Section 171.³⁵⁴

³⁴⁶ See Exhibit 120, Supplemental Direct Testimony of Stephen D. Huston and Adoption and Supplemental Direct Testimony of Beth Lawson with adopted Direct Testimony and Draft Affidavit of Elizabeth A. Ham at ¶ 77 (“Huston/Lawson Supplemental Direct”).

³⁴⁷ Id.

³⁴⁸ Id. at ¶ 79.

³⁴⁹ Id.

³⁵⁰ See Exhibit 140, Gleason/Johnson Direct at ¶ 74; Bell Atlantic New York Order, ¶ 160.

³⁵¹ See Exhibit 140, Gleason/Johnson Direct at ¶ 76; see also Bell Atlantic New York Order, ¶ 160.

³⁵² See Exhibit 140, Gleason/Johnson Direct at ¶ 79; see also id. GSJ Attachment A. PM 6.

³⁵³ Exhibit 140, Gleason/Johnson Direct at ¶ 91

³⁵⁴ See SBC Texas Order ¶ 169.

205. To obtain relief under Section 271, Nevada Bell must demonstrate that it provides competing carriers with access to OSS ordering functions on a timely and consistent basis, and in a manner that allow these carriers a meaningful opportunity to compete.³⁵⁵ For functions that lack a direct retail analogue, the appropriate standard of review is whether Nevada Bell's systems and performance allow an efficient carrier a meaningful opportunity to compete.³⁵⁶ With respect to functions for which there is a retail analogue, the FCC asks if Nevada Bell provides competing carriers with access to its OSS systems in substantially the same time and manner as it provides to its retail operations.³⁵⁷

206. The FCC looks primarily at the applicant's ability to return FOC, reject notice, SOC and jeopardizes; and at its order flow-through rate.³⁵⁸ The FCC looks at the totality of the circumstances in analyzing the OSS ordering functions.³⁵⁹ Every performance measurement result must be viewed as one part of a larger picture that informs the FCC's determination of checklist compliance or non-compliance.³⁶⁰ Performance disparity in any one measurement or sub-measurement usually will not result in a finding of checklist noncompliance.³⁶¹ Standing alone, a single failure in any measurement or submeasurement must either be dramatic or accompanied by additional evidence of competitive impact to result in a finding of non-compliance.³⁶²

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³⁵⁵ See SBC Texas Order ¶ 170; see also SBC Kansas Oklahoma Order ¶ 135.

³⁵⁶ SBC Kansas Oklahoma Order ¶ 170 n. 373.

³⁵⁷ Id.

³⁵⁸ See SBC Texas Order ¶ 170. The FCC has examined order flow-through rates, Jeopardy notices and order completion notices using the "same time and manner" standard. Id. For order confirmation notices and order rejection notices, the FCC has used the "meaningful opportunity to compete" standard. Id.

³⁵⁹ SBC Kansas/Oklahoma Order ¶ 136.

³⁶⁰ Id.

³⁶¹ Id.

³⁶² See id. ("Performance disparity in one measurement or sub-measurement is unlikely to result in a finding of checklist noncompliance, unless the disparity is dramatic, or absent additional evidence of competitive impact.").

(4) Analysis

(A) Firm Order Confirmation

1. Nevada Bell returns FOC notices to CLECs in a way that allows an efficient carrier a meaningful opportunity to compete

207. PM 2 assesses the timeliness with which Nevada Bell returns a FOC and due date to CLECs. The many PM 2 sub-measures (which report results by product type) fall into the following three general categories: (i) electronically received, electronically returned FOCs, (ii) electronically received, manually returned FOCs, and (iii) manually received, manually returned FOCs.³⁶³ Nevada Bell has consistently complied with the benchmark standards that the Commission adopted in the collaborative PM Proceedings, returning FOCs to CLECs in a timely manner.³⁶⁴ Further, performance data on this same measurement for Pacific Bell demonstrates that Pacific Bell consistently has responded to a significantly greater volume of orders by returning FOCs promptly for various types of products.

208. Between January and August 2001, Nevada Bell met or exceeded the benchmark on every single sub-measure covering electronically received, electronically handled orders.³⁶⁵ In June, July and August of 2001, Nevada Bell satisfied the 20-minute benchmark by returning FOCs for 24 and 33 resale, residential Plain Old Telephone Service ("POTS") orders in 1.8 minutes, 3.6 minutes, and 1.2 minutes, respectively.³⁶⁶ Similarly, in June, July and August, Nevada Bell satisfied the 20-minute benchmark by returning FOCs on 36, 35 and 44 electronically received, electronically handled UNE basic loop orders in 1.2 minutes, 1.8 minutes and 1.2 minutes, respectively.³⁶⁷

³⁶³ See generally Exhibit 144, Johnson Supplemental Rebuttal at 17-20.

³⁶⁴ See Section II(B)(5) supra (explaining background of performance measurement proceedings).

³⁶⁵ See Exhibit 144, Johnson Supplemental Rebuttal at 17, lines 19-20. Although the 20-minute benchmark for electronically received, electronically handled FOCs was not implemented until May 2001 Nevada Bell would have met the 20-minute standard in every month prior to implementation.

³⁶⁶ See Exhibit 144, Johnson Supplemental Rebuttal at 17-18, GSJ Attachment K (PM 2, Sub-measures 200100 and 200101).

³⁶⁷ See Exhibit 144, Johnson Supplemental Rebuttal at 18, GSJ Attachment K (PM 2, Sub-measure 200101)